

IN THE HIGH COURT OF BOMBAY AT GOA.
LD-VC-CW-142/2020

Truptesh Gaonkar & ors.

...Petitioners.

Vs

The Chief Officer, Mormugao Municipal

...Respondents.

Shri Bhargav Khandeparkar, Advocate for the Petitioner.

Shri Somnath Karpe, Advocate for the respondent no.1.

Shri Yogesh V. Nadkarni, Advocate for the respondent no.2.

Coram:- DAMA SESHADRI NAIDU, J.

Date: 13th October 2020.

P.C.

There lies a piece of land belonging to the Port Trust. On that, there exists a structure, a shed, which is said to be an illegal one. To begin with, in 2001, the Port Trust filed Writ Petition No.815/2010 against Mormugao Municipal Council, requiring it to act against the unlawful structure. This Court, through its judgment, dated 28.3.2011, disposed of the Writ Petition; it directed the Municipal Council to act on the Port Trust's complaint.

2. Responding to the judicial directive in the Port Trust's Writ Petition, the Municipal Council ordered demolition. One Sanjay@Atmaram R. Tandel questioned that order of demolition before the Municipal Tribunal in Municipal Appeal No.132/2011. Sanjay, claiming to be a devotee, maintained that the nearby Sai Baba temple raised that structure. In Municipal Appeal No.132/2011, the Tribunal noted that it was not convinced by the appellant's claim or objections. Yet it set aside the Municipal Council's Order, dt.19.04.2011; it has, however, allowed the Municipal Council to proceed against the construction in accordance with the law. Essentially, the appellate order is technical and

does not involve the petitioners, for the statutory notice was issued to “an unknown person”.

3. Later, on 20.1.2020, the police of Goa sent a letter to Sub Divisional Magistrate (SDM), Vasco, complaining about this illegal structure. They have pointed out that the structure has been harbouring anti-social elements. It is said to have become a scene of offence: a crime of an alleged kidnap took place there. So the police urged the SDM to take urgent action.

4. In turn, the SDM, Vasco, required the Municipal Council of Mormugao to proceed against the illegal structure. Then, the Municipal Council issued a show-cause notice on 8.5.2020 to an unregistered society —Murgaocha Raja Sarvajanic Ganesh Mandal, represented by its President/Representative.

5. On 18.3.2020, the first petitioner in this Writ Petition, as the representative of that unregistered society, filed a reply. Besides defending the structure, he sought additional time to place on record necessary material. The Municipal Council fixed 20.5.2020 as the date for adjudication. Meanwhile, the unregistered association applied to the Municipal Council for regularisation of the structure. On 19.5.2020 the Municipal Council is said to have passed a resolution seeking legal opinion on the society’s application.

6. But on 20.5.2020, the Chief Officer of the Municipality, being the competent authority, heard the parties, including the first petitioner in this Writ Petition, and declared that the structure is illegal. When brought to Chief Officer’s notice about the society’s pending application for regularisation, he disregarded that plea. It was on the premise that the society or its members own no piece of land. Admittedly the structure exists on the land belonging to the Port Trust.

7. Aggrieved, all the 21 persons, who are the petitioners in this Writ Petition, filed Municipal Appeal No.7/2020 before the Municipal Appellate Tribunal by invoking Section 184 of the Goa Municipalities Act. After

hearing all the parties concerned, the Tribunal, through its detailed order, dated 6.8.2020, rejected the appeal. In that order of rejection, the Tribunal specifically recorded one pertinent fact: The petitioners persistently pleaded about lack of opportunity to place relevant material on record. In that context, the Tribunal observed thus:

“Assuming that the appellants were unable to tender adequate reply/documents, the appellants ought to have produced those documents before the Tribunal to establish the nature of prejudice that has been allegedly caused due to not [deferring] the hearings by the Respondent No.1”

8. The Tribunal’s order is exhaustive and analytical. There is nothing to find fault with that order. As the record reveals, for months the petitioners insisted that they should place on record material to defend the structure, but they filed no material. Thus, the Tribunal was constrained to dismiss the appeal.

9. Under these circumstances, the petitioners filed this Writ Petition on 13.8.2020. This Court granted an ex parte stay on 18.8.2020. But it modified the order on 01.9.2020. Initially, to secure an ex parte order of protection against demolition, the petitioners submitted before this Court that the Authorities are trying to demolish a temple. Stay was granted. Later, after entering appearance, the second respondent pointed out that it is an illegal structure; it is no temple. According to him, only during the Ganesh festival, the people around occasionally—and only for a few days—use that structure for having Ganapati installed. Soon after the festivities, the place remains abandoned and derelict. He emphasizes that it cannot be called a temple. That apart, he has also pointed out that during the rest of the year that illegal structure has become a den for illicit activities, including an alleged kidnap. So this court modified its order, in tune with the interim order prevailing before the Tribunal: though the structure should not be demolished, the petitioners should not use it for any purpose.

10. During later adjournments, Shri Yogesh Nadkarni and Shri Somnath Karpe, the learned counsel for the respective respondents, have insisted that the matter is meritless and should be heard expeditiously given the public interest involved. According to them, it is all the more imperative because the petitioners secured an ex parte interim order by misrepresenting the facts. So I told the petitioner's counsel to be ready with the arguments. But he submitted that he needed four weeks' time to place on record certain documents. Then, I granted him time as a final chance. It was with a specific observation that no further time should be granted. In fact, this Court's docket order, dt.15.09.2010, reads thus:

The learned counsel for the petitioners has argued at length. Then, I suggested whether the petitioners have any material to place before the Court to demonstrate that the respondents/authorities did not provide to them a fair opportunity to place that material. The Court would like to examine whether that material would have affected the outcome. Besides, I also advised the petitioners' counsel to come up with all pleadings, to justify the petitioners' acts, which did not find favour with the civic authorities. He has agreed and sought four weeks' time for that.

2. Post the matter on 13/10/2020. No further adjournments shall be granted.

11. Today, when I have taken up the matter, Shri Bhargav Khandeparkar, the petitioners' counsel, informs me that he has instructions to seek a further adjournment for placing certain material on record. When I pointed out this Court's direction on the last occasion, he nevertheless repeated his request. According to him, that is the only instruction he received. I queried with the learned counsel whether he had any idea about the documents the petitioners wanted to rely on and also where those documents lie. I have also told him that if they are public documents, the Court may ask the authorities concerned to place them on record. So the petitioners might avoid the trouble of securing them.

12. In response, the learned counsel has informed me that the petitioners have still been searching for appropriate documents. At this stage, he cannot tell what those documents are. At any rate, he submits

that they are not public documents readily available to be summoned by this Court. When I have further queried whether the petitioners have any claim of title to the property, he has fairly submitted that the petitioners have only pleaded prior possession but not the title. As a matter of fact, even before this Court the petitioners filed annexures running into about 200 pages. They have filed many documents—even the pleadings, orders, and judgments in cases to which they are not parties. Yet, surprisingly, they went on harping on one aspect: they did not get enough opportunity to place relevant material on record. And that relevant material has never come to be stated, at least, as to its nature.

13. All my attempts to persuade the learned advocate to get on with the matter bore no fruit. So I have pointed out that this Court accommodated the petitioners' request earlier on the premise that they would be ready with the case by next adjournment. The Court also hoped that by then, the petitioner would be submitting all the documents they wanted to rely on. Even at this stage, I have told the learned counsel that the Court is willing to grant reasonable time, if not six weeks, provided the petitioners throw some light on the nature of the documents they wanted to place on the record. But the learned counsel is clueless on that point; he only said that his instructions are to seek an adjournment.

14. Under these circumstances, I am constrained to hold that the petitioners have abused the process of Court, bordering on contempt. Any Writ petition under either Article 226 or Article 227 of Constitution of India is an extraordinary public law remedy. It ought not to be abused.

15. I cannot but deprecate the attitude displayed by the petitioner and the devices deployed by them in securing an ex parte order and, then, trying to drag the proceedings. Amidst the uncontrollable docket explosion, every court in India takes up a case in preference to thousands or even lacks of other pending cases. If a case proves itself unworthy of judicial attention, then the time bestowed on that case goes waste. And

that amounts to a disservice to other cases, for thy stand deprived of judicial attention they deserved.

16. Besides, I also advised the learned counsel on record not to be a mere mouthpiece of his client. He is, in the first place, an officer of the Court.

17. As a result, I dismiss this Writ Petition with a cost of three lakh rupees to be credited to the Chief Minister's Relief Fund. If the petitioners fail to submit proof of their paying the costs in three months, the Registry will forward this judgment to the Revenue Authorities. They shall initiate action and recover the costs as if they were revenue arrears due from the petitioners.

With these observations, I dismiss the Writ Petition.

DAMA SESHADRI NAIDU, J.

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